

The Honourable Thomas Wentworth, Esquire, Grandson of Thomas, late Earl of Strafford, Nephew of William, late Earl of Strafford, *Appellant.*

The Right Honourable Thomas Lord Raby, and Mrs. Anne Wentworth, *Respondents.*

The Appellant's C A S E.

20 Jac. 1. **T**homas Earl of Strafford, the Appellant's Grandfather (for Love and Affection only) to his Lordship's Two Brothers William and John Wentworth, granted to them a Rent of 270*l. per Annum*, chargeable upon Lands in England, and Redeemable on Payment of 2700*l.*

William outlived his Brother John Wentworth, and became Intituled to the whole 270*l. per Annum*, and left 100*l. per Annum*, Part thereof, to his Daughter, and the remaining 170*l. per Annum* to his Son Sir William Wentworth, Father of the Respondents.

William Earl of Strafford, as Son and Heir to his Father, Earl Thomas, being Intituled to the Lands out of which the Annuity Issued, did, about Fifty Years since, Purchase the Daughter's 100*l. per Annum*, for 1000*l.*

24 Sept. 1670. An Account was made up between the Earl and Sir William, by which the Arrears of the 170*l. per Annum*, to and for Michaelmas, 1670. was Stated at 595*l.* which with the half Years Annuity due at Lady-Day, 1671. and some Money paid before that time to the Earl by the said Sir William Wentworth, amounts to about 700*l.* in Satisfaction whereof Sir William accepted of an Assignment of a Mortgage for 700*l.* which the Earl of Strafford had upon the Estate of the Earl of Kildare, and thereupon gave a Release for all Arrears of the Annuity to that time.

Afterwards, viz. between the 16th Feb. 1671. and the 20th June, 1681. Sir William, by Surprise and undue Insinuations, procured from the Earl Twelve several Mortgages, viz. One for 12000*l.* and the other Eleven for Securing 11662*l.* principal Money, without giving the Earl Counterparts of any more than two of them: And part of this time the Earl reposed so great Trust in Sir William, as to employ him as one of his Lordship's Commissioners for Letting and Setting his Irish Estate, and allowed him a Salary of 200*l. per Annum* in Respect thereof.

The Earl coming afterwards to be informed of the Fraud put upon him in gaining the said Twelve Mortgages; and that Sir William, (who was only im-
An—Term 1685. powered to Let and Set had) also taken upon him to Receive great Part of the Rents of the Earl's Estate, Thereupon Exhibited Two Bills in the Chancery of Ireland, to Discover the Dates and Considerations of his several Mortgages, and what he Claimed to be due thereon, and that he might Discover and Discount what Moneys he had Received for the Earl's use; and the Earl particularly Charges, that the 12000*l.* Mortgage was only a Trust, and that there was not near so much really Lent and Due upon the other Eleven Mortgages as was mentioned to be the Considerations thereof, and Instances several particular Errors therein, particularly that of Charging him with Four Years and a half Interest, for the said 700*l.* Due on the Earl of Kildare's Mortgage after it was Assigned.

5 March 1685. Sir William in his Answer, and in a Cross Bill Exhibited by him, denies the Trust of the 12000*l.* Mortgage (which he said was a Mortgage of but 10000*l.*) and said that there was Due to him thereon, and on the other Eleven Mortgages, above 30000*l.* And that the Particulars which made up the Considerations of all his Deeds were contained in two several Written Accounts, or Schedules, viz. that which made up the Items of the 10000*l.* Mortgage in an Account delivered to the Earl himself, and the other which made up the 11662*l.* in a Written Particular, or Schedule, delivered to Dr. Hall, (the Earl's Commissioner) and refers to these two Written Particulars; whereby he said it would appear, that at the times the several Mortgages were Executed, there was really more Due to him than was incerted in the Considerations thereof.

15 Oct. 1688. Both Causes were then heard by the Lord Chancellor Fitton, and referred to the Masters to take the Account between the Parties Generally, and to Report any Facts Specially as they thought fit for the Courts further Direction.

28 May 1695. The Masters (by Consent of both sides) annex to their Reports a Copy of the said Schedule, or Particular, delivered to Dr. Hall, and of the several Errors which they found therein, for the further Directions of the Court, whether the same should be ravelled into or not.

10 June 1695. And that Point being fully debated before the Lord Chancellor Portor, he declared that the said Accounts ought to be particularly Stated, and therefore ordered that the Master should proceed to Certifie the whole Account, and that the same should be taken accordingly.

Pursuant to these Directions, the Masters Certifie the several Errors which appeared to them in the said Schedule, or Particular, as Namely, 85*l.* charged for half a Years Arrear of the 170*l.* Annuity Due Lady Day, 1671. tho' before satisfied by the Assignment of the Earl of Kildare's Mortgage.

And also 70*l. per Annum*, charged for Interest of the 700*l.* (Arrear of the Annuity) for Four Years and an half, after Sir William had accepted the Assignment of the Earl of Kildare's Mortgage in Satisfaction thereof.

And lastly, reckoning Interest upon Interest at 10 per Cent. from the date of one Mortgage to another, contrary to Sir William's expresse Agreement in that behalf; and tho' the 170*l.* Annuity was secured upon Lands in England, and at most could carry but 6*l. per Cent.* besides several other Errors mentioned in the said Report.

By other Reports, the Master Certifies Sir Williams Receipts of the Earl's Rents, and other Moneys, to amount to 15749*l.* and that 10250*l.* part thereof was received during the time that the Eleven Mortgages were obtained.

15 July 1699. Upon hearing Exceptions taken by the Respondent to the Masters said Report, the Lord Chancellor Methwyn, without (Rehearing the Cause) hath quite varied the former Orders and Decrees, and hath directed,

(1.) That the Errors in the said Schedule or Particular, which made the Considerations of the Eleven Mortgages, (except that of the 85*l.*) shall not be ravelled into, whereby the Appellant is liable to answer Interest upon Interest at 10 per Cent. upon the Eleven Mortgages, (that of the 12000*l.* being at last waved by the Respondent) and directed the Accounts upon Eleven Mortgage Deeds to be taken distinct.

(2.) That the Rents of the Appellant's Estate should be brought into Court to answer the Ballance of the Account.

(3.) That Two Sums of 20*l.* and 249*l. 5s. 8d.* should be disallowed, tho' there is positive proof that they were paid to Sir William Wentworth upon the Earl's Account.

21 Feb. 1700. And the Cause coming to be heard (in the Lord Chancellor's Absence) before the Lords Commissioners; upon the Masters Special Report, it was Ordered, That what Money Received by Sir William, during his Agency for the Earl, should not go in Discharge of the Money due on the Mortgages.

Which Orders and Directions of the Lord Chancellor Methwyn, and Lords Commissioners, being (as the Appellant is advised) contrary to the Rules of Equity, he hath Appealed from the same.

Note. That in the said Schedule or Particular delivered to Dr. Hall, (the Earl's Commissioner) Sir William Wentworth stated the particular Sums separately, to make up the Principal Money secured by each of the Eleven Mortgages, one whereof is dated the 26 of Feb. 1671. another the 23 Oct. 1672. another 25 March 1674. another 24 March 1674. One of the Items that makes up the Principal Money in each Mortgage, is the Interest of 700*l.* supposed to remain then due for the Arrears of the said Annuity; whereas the said Arrears were before satisfied by an Assignment made of the Lord Kildare's Mortgage the 24th of Sept. 1670. which Sir William Wentworth accepted in full Satisfaction, and thereupon gave a Release of the said Arrears to the said Earl.

This Schedule or Particular, Sir William Wentworth in his Answer refers to, and submits to come to an Account generally.

This therefore was never disputed in the Life-time of the said Earl, but was by Consent of Parties annexed to the Masters Report, 28 May 1695. upon which Report, the Cause being heard before the Lord Chancellor Portor, upon a full Debate of the Matter, he Ordered, That the said Account should be particularly Stated, and that the Master should proceed to take the same accordingly, which the Master did; and in his Report dated 28 June 1699. certified the said Errors in the said Schedule as aforesaid.

Upon which Report, the said Cause coming to be heard before the Lord Chancellor Methwyn, altho' he allowed the Error as to the said 85*l.* which appears no otherwise than by the said Schedule, and ordered the Account to be taken accordingly; yet as to the other Errors, which appear more plain by the said Schedule and Sir William's Answer than that of the 85*l.* he ordered that the same should not be ravelled into.

Note. That this Direction of the Lord Chancellor Methwyn, is quite contrary to the Decrees and Orders made by his Predecessors, without Rehearing the Cause, which is contrary to the Rules and Methods of the Court.

Note. That the Errors in the Schedule, computing Interest upon Interest at 10 per Cent. amount unto above 10000*l.* and it appears by the said particular, that the Earl never received in Money more than 1825*l.* of the 11662*l.* Principal Money, secured by the said Mortgages; but the rest is carried on by charging Interest upon Interest at 10 per Cent. altho' the said Sir William Wentworth had at the same time several Thousand Pounds of the Earl's in his Hands; and in his Answer submitted to Answer Interest for the same, from the respective times of the Receipts thereof.

The Two Sums of 20*l.* and 249*l. 5s. 4d.* are so plainly proved to be received by Sir William, or by his Order, that there is not the least Colour why they should not be allowed and discounted out of the Respondents Demands.

Wherefore the Appellant humbly hopes your Lordships will see Just Grounds to Vary and Reverse the said Orders and Directions in the aforesaid Particulars, and Discharge the Order for bringing the Rents of the Appellant's Estate into Court, he being willing (if required) to give Security to abide the Event of the general Account.

Freemason